UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 624

Case No. 684: MUHTADI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 15 April 1992, Fihr Amin Muhtadi, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA) filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 9 August 1992, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, in essence, to:

"First Alternative

1) Instruct UNRWA/Health department to immediately rescind the unjustified decision to terminate my services with the Agency, and thereby take the necessary steps for my return to duty under the same previous contractual terms and conditions.

2) Instruct UNRWA/Jordan to release the retention of grade sixteen by fairly confirming the award of this grade to me; encompassing the refund of the loss evidenced during the years of its obstruction. This amount is calculated starting from the year 1977,

date where I was suspended at grade fifteen, until the year of my contractual termination; summing up to US$23,000.- including its corresponding benefits.

...

5) Instruct UNRWA/Jordan to pay me the amount of US$100,000.- for the severe loss and damage, moral and otherwise, inflicted upon me due to the unfair and unjustified decision made by the Agency.

Second Alternative

...

2) Instruct UNRWA/Jordan to pay the full compensation of 30 months salary for each year of service I spent with the Agency calculated until the official retirement age of sixty.

3) Instruct UNRWA/Jordan to refund the amount of US$50,000.- the usual pay for the 3 years, period until I reach the age of retirement which I have lost due to the unjustified decision of the Agency.

4) Instruct UNRWA/Jordan to pay me the amount of US$250,000.- for the severe loss and damage, moral and otherwise, inflicted upon me due to the unfair arbitrary decision of the Agency."

Whereas the Respondent filed his answer on 2 October 1992;

Whereas the Applicant filed written observations on 2 March 1993;

Whereas, on 26 October and 23 November 1993, the Applicant submitted additional documents and an additional statement;

Whereas, on 16 December 1993, the Executive Secretary of the Tribunal informed the Applicant that the Tribunal had ruled that no oral proceedings should be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 6 May 1959, as a Medical Officer in the Gaza Strip. He resigned from UNRWA under area staff rule 109.6, with effect from 31 January 1963. The Applicant re-entered the service of UNRWA on 15 March 1968. He was

offered a temporary indefinite appointment as an area staff member at grade 14, step 1 level as a Medical Officer "B" in Amman, Jordan.

On 27 January 1990, Dr. A/Salam Abu Awad, the Field Health Officer in Jordan, requested the Acting Field Personnel Officer to refer the Applicant to a Medical Board "to determine his fitness for continued service with the Agency", in view of his health condition which "seems to have adversely affected his performance." A Medical Board convened on 15 March 1990, concluded that the Applicant was fit for continued service with the Agency, but recommended that he be re-evaluated after one year.

On 15 November 1990, Dr. Nasha'at Ammari, the Acting Field Health Officer, requested that the Applicant's condition be examined by a Medical Board before the end of the above-mentioned one-year period. A second Medical Board convened on 2 December 1990 and concluded again that the Applicant was fit for continued service with the Agency. The Board recommended that the Applicant be re-evaluated after 3 months, but the Deputy Field Office Director decided to extend that period to 12 months.

On 14 March 1991, Dr. Amad, the Field Health Officer in Jordan, convened a third Medical Board to determine the Applicant's fitness for continued service with the Agency, upon receipt by the Administration of a letter from the Applicant dated 3 March 1991, in which he requested a transfer to the Health Centre nearest his residence. The Applicant explained in this letter that travelling to work had an "injurious effect" on his health.

A Medical Board composed of Dr. N. Ammari, the Deputy Field Health Officer who had requested the first Medical Board and, who acted as Chairman, Dr. Z. Al Zu'bi and Dr. L. Azzeh, convened on 6 June 1991, and concluded that the Applicant was "unfit for continued service with the Agency". In a letter dated 2 July 1991, the Field Personnel Officer, informed the Applicant of the Agency's decision to terminate his services on medical grounds under area staff rule 109.7, with effect from 30 September 1991. The letter read, in part, as follows:

"... Your services will therefore be terminated on medical grounds under area staff rule 109.1 effective close of business on 30 September 1991, i.e. after you exhaust your sick and annual leave entitlements.

2. In addition to the Provident Fund entitlements, you will be eligible to receive a Disability Benefit under para. 2 of staff rule 109.7. ..."

On 8 September 1991, the Applicant wrote to the Director of UNRWA Affairs, Jordan, requesting, inter alia, that another Medical Board evaluate his medical condition. In a reply dated 25 September 1991, the Director confirmed the Agency's decision to terminate his services "on health grounds". In letter dated 13 October 1991, transmitted to the Administration by the Secretary of the Joint Appeals Board (JAB) on 16 October 1991, the Applicant contested this decision. The Board adopted its report on 21 February 1992. Its findings read, in part, as follows:

"...

(d) Even though the Board has no competence and lacks jurisdiction to contest the findings or recommendations of the Agency's Medical Board, nevertheless it pinpoints the following:

(i) The Appellant was a staff member of the same Health Department that recommended his medical unfitness for continued service with the Agency.

(ii) The Deputy Field Health Officer who recommended referral of the Appellant to a Medical Board was himself a member of the Medical Board that declared the Appellant medically unfit to continue service with the Agency, a fact that does not eliminate the lack of impartiality of a Medical Board set up to determine the fitness of a staff member serving in the same department.

(iii) By referring to the content of the two medical reports submitted by cardiologists, the Board finds that the recommendation of the Medical Board considered adverse facts affecting the Appellant's employment only while other facts declaring him as fit were ignored.

> (iv) The Board noted that the Appellant had been referred to medical boards three times, however, no indication showed the presence of a cardiologist in the Medical Board that declared the Appellant 'unfit' for service, knowingly that the Appellant's major health condition had been a cardiac problem.
>
> In view of the foregoing, the Board has enough reason to believe that the Administration's decision of declaring the Appellant 'medically unfit' for service with the Agency is questionable and accordingly makes its recommendation that the Administration's decision be reconsidered under applicable Area Staff Rules and Regulations."

In a letter dated 16 March 1992, the Commissioner General transmitted to the Applicant a copy of the Board's report and informed him as follows:

> "...The Board has concluded that the decision to terminate your services on medical grounds was 'questionable' and that it should be 'reconsidered under applicable Area Staff Rules and Regulations'. Unfortunately, the observations made in the Board's report are not sufficient to demonstrate that the decision appealed against was motivated by reasons other than those expressed in the Medical Board's report of 6 June 1991. I must therefore inform you that the decision to terminate your services will stand unchanged."

On 9 August 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's grade was suspended at grade 15, since 1977, ignoring his seniority, qualifications and long years of service.

2. The Respondent intentionally transferred the Applicant to remote health centres in order to put him under extreme pressure, affect his health and force him to resign.

3. The third Medical Board, under pressure from the Field Health Officer, was determined to rule that the Applicant was unfit for further service. Its decision was biased and improperly motivated.

Whereas the Respondent's principal contentions are:

1. The Applicant's allegations on the functioning of the UNRWA Health Department in Jordan and his failure to be promoted in 1989, have no relevance to the present application.

2. The Applicant had admitted on numerous occasions that he was afflicted with serious health problems.

3. The Applicant's fitness for continued service with UNRWA was assessed in accordance with standing procedures.

The Tribunal, having deliberated from 1 to 12 November 1993, now pronounces the following judgement:

I. The Applicant has a long history of service with the United Nations, having joined UNRWA in 1959. He was obviously highly regarded as he was offered the post of Field Health Officer in the Gaza Strip in 1969 and 1974. On both occasions, the Applicant declined the offers, preferring "to work for the benefit of the people", as he puts it.

II. According to the Applicant, his difficulties began when a new Administration of the Health Department took over. Dr. Abdul Al Salam Abu Awad, who became Field Health Officer, had been for many years, the Applicant's junior. The picture painted by the Applicant of the new regime is one of favouritism and discrimination where certain doctors were promoted out of turn while others were kept at a low level for far too long. The Applicant states that, since 1977, his own grade was suspended at 15, ignoring his seniority, length of service and qualifications. He also suggests that the selection procedures set up by the Administration were mere window-

dressing to provide cover for the selection of those persons whom the Administration wanted, irrespective of their qualifications.

III. The Applicant says that to expose the dishonesty of the selection boards, he adopted the ploy of applying for promotion himself. As he expected, he failed as, indeed, he did in his attempt to bring this matter before the Director of Health in Vienna.

The Applicant also takes issue with the scoring procedures for evaluating candidates. He feels that the procedures place an undue emphasis on matters such as personality, at the expense of seniority, thus militating against himself, he being very much senior to at least some of the other candidates.

IV. The Applicant, in effect, is making the very serious charge that Dr. Abu Awad, in conjunction with others in the Department, ran it without regard for rules of fair procedure. Because of the Applicant's attitude toward such a system, he says that a campaign was waged against him, by transferring him to remote areas so as to affect his health adversely, he being a diabetic. He suffered epigastric pain and symptoms of an ulcer resulting in periods of sick leave totalling 12 days. Dr. Abu Awad referred him to a Medical Board on 27 January 1990. The Board held him fit to work.

The Field Health Officer's next step, in what the Applicant would regard as part of a campaign against him, was to transfer him to a large emergency health centre. There, he was subjected to repeated stresses, bringing about a coronary spasm and stenosis. Following severe chest pain, he was hospitalized on 21 September 1990, for catheterization of heart vessels which showed stenosis. He was discharged from the hospital on 4 October 1990, following apparently successful procedures. His doctor recommended two weeks sick leave after which the Applicant could return to work. However, the Acting Field Health Officer, unjustifiably, in the Applicant's view, referred him to another Medical Board on 27 November 1990 and the Board found him fit. He returned to work on 4 December 1990.

V. The Applicant's request to be sent to a health centre near his home was not granted, again, he would say, in an effort to make him resign. In fact, following the Applicant's request for a transfer back to his home area, because of the effects of transportation on his health, a third Medical Board was asked to assess his condition. In the meantime, he again had to be admitted to the hospital. After further treatment, the hospital declared him fit for work and discharged him on 21 March 1991.

VI. A board of general practitioners, headed by Dr. Ammari, who was under the jurisdiction of the Field Health Officer, on 6 June 1991, decided that the Applicant was medically unfit. It is this decision that is central to this case.

VII. The Applicant says that the finding is a wrong medical decision. He says that Dr. Ammari belongs to what he describes as an oligarchy under Dr. Abu Awad, a group motivated by selfish interests. The Board referred the Applicant to an UNRWA cardiologist, whose classification of the case was that of a cured coronary artery. The Applicant says that in an effort to obtain support for its decision, the Board referred him to Dr. Nayef Eldibs who found, at the time of his examination, that the Applicant should be considered fit for work.

Despite these findings, the decision that the Applicant was unfit for work was maintained.

VIII. In the application made to the Tribunal, the Applicant refers to his non-promotion because of the alleged defective rating system and to less experienced medical officers being promoted. The Respondent's submission is that, because these matters were not before the JAB and in the absence of an agreement to submit them to the Tribunal, they are not receivable by the Tribunal. The Tribunal concludes that issues concerning the Applicant's promotion and evaluation are not properly before it, not having been considered by

the JAB. For the same reason, the Tribunal cannot deal with the allegations concerning his transfers.

IX. In dealing with the substantive issue, whether the services of the Applicant were properly terminated, the Respondent makes the reasonable point that the post of medical officer is busy, demanding and stressful. The Administration, therefore, believes it to be advisable to ensure that its medical staff is medically fit and reference is made to area staff rule 104.4, which provides for medical examination of staff members whenever necessary.

The Respondent refers to the Applicant's various admissions, as the Respondent terms them, of the existence of health problems. Reference is made to various letters from the Applicant in which he describes matters injurious to his health and speaks of chest pains. The Respondent also makes use of the Applicant's letter of appeal to the JAB, referring to angina pectoris, catheterization and operations for stenosis.

The Respondent says that all of these statements establish that the Applicant was afflicted with a heart condition and diabetes.

X. There is, of course, no doubt that this is so; this is a common conclusion between the parties. The questions that follow from this are whether the Administration acted reasonably and fairly in its reaction to this acknowledged fact and whether, in the final analysis, the decision to terminate the Applicant's employment was fair and reasonable.

XI. It appears to the Tribunal that the Administration can scarcely be criticized for carrying out various medical examinations of the Applicant in view of his known health problems.

But the Tribunal has to consider the conduct of the medical boards and their conclusions and indeed their composition and most importantly, the conclusions of the third Medical Board. The Tribunal notes the Respondent's submissions regarding its approach to medical opinions and diagnoses. However, the question at issue

here, of the fairness of the termination, will not be answered by an investigation of the medical opinions or the validity of the medical conclusions. The Tribunal maintains its position that it cannot substitute its own judgement on medical matters for that of a medical board. But this does not mean that the Tribunal will refrain from considering whether a medical board decision is unsupported by the evidence before it. (Cf. Judgement No. 587, Davidson (1993).

XII. The first two medical boards concluded that the Applicant was fit for work, although with a proviso on re-evaluation. At the third and pivotal board hearing, the Board seems to have had at its disposal the assistance of an UNRWA cardiologist, who, according to the Applicant, arrived at a conclusion that was consistent with a finding of a cured coronary artery. The Applicant was referred to another cardiologist, Dr. Eldibs, who concluded that he was fit for work at the time of his examination. The Board also, presumably, had at its disposal the information given by the Chief Specialist of Heart Diseases at the Queen Alia Heart Institute. The Board, therefore, had information from at least two and possibly three sources, about the Applicant's ability to work and this was evidence that the Board itself had sought. The members of the Board obviously could form their own medical opinion but, having sought the views of outside experts in the field, the latter must necessarily have been regarded as decisive by the Medical Board in the absence of substantial evidence supporting a contrary conclusion. Yet there was no such evidence before the Medical Board. It would appear that the only other evidence was that contained in the Applicant's own correspondence.

XIII. Despite having expert medical evidence, all pointing in one direction, the Board still came to the conclusion that the Applicant was unfit for work. In the view of the Tribunal, it cannot be said that this decision by the Medical Board reflected a fair or reasonable evaluation of the evidence before it. We can only

conclude that, in the light of the evidence, this decision was perverse. The Tribunal must also refer, as the JAB has done, to the general composition of the Board, which is in accordance with the Rules. However, it could well be regarded as unacceptable that a staff member's medical fitness should be judged by members of his own department. These are matters which could be perceived as indications of bias and partiality.

The Tribunal, therefore, finds in favour of the Applicant and orders:

(1) That the Respondent's decision to terminate the Applicant's appointment under area staff rule 109.7 be rescinded and that the Applicant be reinstated.

(2) If, within 30 days of the notification of the judgement, the Commissioner General decides, in the interests of the Agency, not to rescind the decision referred to in (1) above, the Applicant shall be compensated.

(3) In accordance with article 9(1) of its Statute, the Tribunal fixes the amount of such compensation at 18 months of the Applicant's net base salary, at the rate in effect on the date of his separation from service.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 12 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary